

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

**JASON WATTIE BUZZARD and
PAUL WILLIAM MARTIN, *Petitioners,***

v.

UNITED STATES OF AMERICA, *Respondent.*

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

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I. QUESTION PRESENTED FOR REVIEW

Whether a police officer conducting a traffic stop unlawfully prolongs that stop, in violation of the Fourth Amendment, by asking the occupants of the car whether there is anything “illegal” in the car without any basis to do so.

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IV. LIST OF ALL DIRECTLY RELATED PROCEEDINGS

- *United States v. Buzzard*, No. 2:19-cr-0002201, U.S. District Court for the Southern District of West Virginia. Judgment entered January 17, 2020.
- *United States v. Martin*, No. 2:16-cr-000143-1, U.S. District Court for the Southern District of West Virginia. Judgment entered March 11, 2020.
- *United States v. Martin*, No. 2:19-cr-00021-1, U.S. District Court for the Southern District of West Virginia. Judgment entered March 11, 2020.
- *United States v. Buzzard*, 1 F.4th 198 (4th Cir. 2021), U.S. Court of Appeals for the Fourth Circuit. Judgment entered on June 11, 2021.

Buzzard and Martin were charged separately in the district court, but their appeals were consolidated for resolution before the Fourth Circuit.

V. OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit affirming the denial of the motions to suppress is published and is attached to this Petition as Appendix A. The district court's rulings denying the motions were made in written orders in each case and are attached to this Petition as Appendix B (Buzzard) and Appendix C (Martin). The judgment orders are unpublished and are attached to this Petition as Exhibit D (Buzzard) and Exhibit E (Martin).

VI. JURISDICTION

This Petition seeks review of a judgment of the United States Court of Appeals for the Fourth Circuit entered on June 11, 2021. No petition for rehearing was filed. This Petition is filed within 150 days of the date the court's judgment,

pursuant to this Court's order of March 19, 2020. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1254 and Rules 13.1 and 13.3 of this Court.

VII. STATUTES AND REGULATIONS INVOLVED

This case requires interpretation and application of the Fourth Amendment to the United States Constitution, which says:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

VIII. STATEMENT OF THE CASE

A. Federal Jurisdiction

On January 24, 2019, an indictment was filed in the Southern District of West Virginia charging Jason Wattie Buzzard with possession of a firearm as a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 922(a)(2). J.A. 45-48.¹ Because that charge constitutes an offense against the United States, the district court had original jurisdiction pursuant to 18 U.S.C. § 3231. This is an appeal from the final judgment and sentence imposed after Buzzard pleaded guilty to the indictment. J.A. 23-24. A judgment order was entered on January 17, 2020. J.A. 620-626. Buzzard timely filed a notice of appeal on January 30, 2020. J.A. 627. The United States Court of Appeals for the Fourth Circuit had jurisdiction pursuant to 18 U.S.C. § 3742 and 28 U.S.C. § 1291.

On January 24, 2019, an indictment was filed in the Southern District of West Virginia charging Paul William Martin with possession of a firearm as a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 922(a)(2). J.A. 42-44. A superseding indictment charging the same offense was filed on February 21, 2019. J.A. 48-59. On September 18, 2019, a second superseding indictment was returned charging the same offense (Count Two), as well as charging that Martin conspired with “J.W.B.” to possess a firearm after having been convicted of a felony, in violation of 18 U.S.C. § 371 (Count One). J.A. 265-270. Because those charges constitute offenses against the United States, the district court had original

jurisdiction pursuant to 18 U.S.C. § 3231. This is an appeal from the final judgment and sentence imposed after Martin was convicted at trial under Count Two of the indictment. J.A. 559-560. A judgment order was entered on March 11, 2020. J.A. 660-666. Martin timely filed a notice of appeal on March 18, 2020. J.A. 668.² The United States Court of Appeals for the Fourth Circuit had jurisdiction pursuant to 18 U.S.C. § 3742 and 28 U.S.C. § 1291.

B. Facts Pertinent to the Issue Presented

This case began on October 12, 2018, when South Charleston (West Virginia) Police officer Tyler Dawson made a traffic stop of a car which was driven by Buzzard and in which Martin was a passenger. A search of the car uncovered two firearms, one each under the driver's and passenger's seat. At issue in this Petition is whether Dawson's conduct of the traffic stop violated the Fourth Amendment and should have led to the suppression of the evidence that formed the bases of the convictions against Buzzard and Martin, as well as the revocation of Martin's term of supervised release.

1. Dawson stops Buzzard and Martin and initially inquires whether there is anything "illegal" in the car.

In the early morning of October 12, 2018, Dawson was on patrol when he spotted a silver car with a defective middle brake light. The car had just left the

¹ "J.A." refers to the Joint Appendix filed in this appeal before the Fourth Circuit.

² Martin was also serving a term of supervised release at the time he was charged in this case and his supervised release was revoked as a result of his conviction. J.A. 29-35, 657-659, 667.

parking lot of a Sheetz gas station and convenience store. J.A. 308. The car immediately pulled over after Dawson turned on his lights. J.A. 241, 310. Dawson made contact with the driver, Buzzard, and recognized Martin, the front seat passenger, from prior interactions with him. J.A. 241-242. As soon as Dawson approached the driver's side door of the car, he asked whether there was anything illegal in the vehicle. J.A. 181, 186. Dawson did not tell Buzzard or Martin why he made the stop. J.A. 182, 186.

Buzzard replied that he had a marijuana "bowl" and produced it from under his shirt. Martin added that he had one, too, and also produced a syringe that was in one of his pants pockets. After Buzzard and Martin were both removed from the car, officers searched it. They recovered a pair of handguns wrapped in socks, one each from under the driver's seat and the passenger's seat. J.A. 244.

Buzzard and Martin were arrested. Each was charged, in separate proceedings, with being a felon in possession of a firearm. J.A. 42-47. In addition, Martin's probation officer filed a petition to revoke his term of supervised release for committing another crime and possessing firearms, as well as other minor violations related to drug use and not keeping his probation officer informed of developments in his life. J.A. 36-41.

2. The district court denies Buzzard's and Martin's motions to suppress.

On March 28, 2019, Martin filed a motion to suppress the firearms found in the car, as well as additional evidence. J.A. 51-64. Buzzard filed a similar motion on

April 8, 2020. J.A. 86-99. Neither challenged Dawson's reason for initiating a traffic stop. They argued that their Fourth Amendment rights were violated by Dawson's unwarranted deviation from completing a traffic stop in order to pursue an unrelated inquiry as to whether there was anything illegal in the car. At the time of the stop, Dawson lacked reasonable suspicion of any ongoing criminal activity involving either of the two men. Therefore, Dawson's question as to whether there was anything illegal in the car unlawfully prolonged the stop beyond the reasonable time that it would have taken for him to write a citation for a defective brake light. J.A. 66-76; 101-111.

A consolidated suppression hearing was held on April 24, 2019. J.A. 141-218. Dawson testified that on the morning of October 12, 2018, he was assigned to general patrol. J.A. 162. According to Dawson, the area where the traffic stop occurred was considered "a high crime area." J.A. 243. Dawson testified that during traffic stops when he approaches the driver he "[a]lways advise[s] [the driver] why [he] stopped them and then [he] always ask[s] for license and registration, proof of insurance." J.A. 241-242. After he asked for those documents from Buzzard, Dawson noticed Martin acting nervously in a way that "was uncommon for passengers to act" and thought he might try to flee. J.A. 242. Dawson explained that he knew Martin from three prior encounters and was aware he was a felon. *Ibid.*

Dawson was alone at the time of the stop and never called for any backup or assistance. Instead he relied upon other South Charleston officers who might have heard the radio traffic to come to the scene. While he was waiting for another officer

to arrive, Dawson testified, he asked if there was anything illegal in the car. J.A. 243. The reason that Dawson gave for asking that question was because of “the time of night, the high crime area, Mr. Martin’s history and Mr. Martin’s behavior.” J.A. 158.

On cross examination, Dawson stated that he was not conducting surveillance at Sheetz and that he did not know that Martin was a passenger in the car before the stop. J.A. 163, 164. Dawson further admitted that he had no basis of knowing whether Martin was addicted to any drugs at the time of the stop. J.A. 163. Dawson’s incident report, the criminal complaint prepared by him, and an application for a search warrant did not contain any reference to him asking Buzzard for his license and registration or Martin’s fidgeting in the passenger seat. J.A. 168-170. His grand jury testimony was similarly deficient. J.A. 173.³ Once other officers arrived, Buzzard and Martin were removed from the car, it was searched, and the two handguns were recovered. J.A. 244.

Martin and Buzzard both testified during the hearing, with Buzzard sequestered outside the courtroom while Martin took the stand. J.A. 180. Martin testified that Dawson “initially said” to Buzzard “[i]s there anything illegal in the car?” J.A. 182-183. He did not introduce himself, state the basis for the stop, or ask Buzzard for his license or registration. J.A. 183. Buzzard similarly testified that what Dawson “initially said to you when he came up” was “if I had anything illegal

³ After counsel asked that question, the district court interjected that it “would be good if you had a jury, but I don’t care.” J.A. 173-174.

in the car.” J.A. 185-186. He corroborated Martin’s testimony that Dawson did not identify himself or the basis for the stop and did not ask for his license or registration. J.A. 186. In addition, both testified that Dawson made remarks about Martin being the reason for the stop. Buzzard testified that Dawson told another officer that “he seen Mr. Martin in the car and knew he was up to something,” while Martin testified that Dawson said “he pulled [Buzzard] over because he seen me get in the car” at Sheetz. J.A. 183, 187.

On September 3, 2019, the district court issued an order in each case denying Buzzard’s and Martin’s motions to suppress. J.A. 241-264. The district court identified two questions it needed to answer. The first was whether Dawson asking if there was anything illegal in the car “was related to the mission of the stop.” J.A. 246. The second was if that question was not related to the mission of the stop, whether it unlawfully prolonged the stop. *Ibid.*

As to the first question, the district court concluded that asking if there was anything illegal in the car was related to the mission of the initial traffic stop. “In this case,” the district court explained, “the officer asked a single question” that was “related to officer safety.” J.A. 247. That was because the question could “expose dangerous weapons or narcotics.” *Ibid.* Thus, the question was “related to the mission of the stop itself.” *Ibid.*

As to the second question, the district court concluded that even if the question was not related to the purpose of the stop, it “did not violate the Fourth Amendment because it did not lengthen the traffic stop” because “the question was

asked concurrently with the traffic mission related activities.” J.A. 249. That was true, the district court concluded, “whether or not the question was asked initially . . . or after initiating contact with” Buzzard. *Ibid.*

Following the denial of the motions to suppress, Buzzard entered into a plea agreement with the Government. J.A. 564-575. In it, he agreed to plead guilty to being a felon in possession of two firearms, as charged in his indictment. J.A. 564. The agreement maintained Buzzard’s ability to appeal the denial of his motion to suppress. J.A. 568. He was sentenced to 18 months in prison and a term of supervised release. J.A. 621-622. Martin was convicted of being a felon in possession of a firearm after a jury trial. J.A. 541, 551, 559-560.⁴ In addition, his term of supervised release was revoked. J.A. 651. Martin was sentenced to a term of 46 months in prison on the new charge, a concurrent 18-month sentence on the revocation, and a single new three-year term of supervised release. J.A. 644, 653-654.

3. The Fourth Circuit affirms the denial of Buzzard and Martin’s motions to suppress.

Buzzard and Martin separately appealed the denial of their motions to suppress and their appeals were consolidated by the Fourth Circuit. *United States v. Buzzard*, 1 F.4th 198, 200 (4th Cir. 2021).⁵ The court affirmed the denial of their

⁴ The district court granted Martin’s motion for a judgment of acquittal on the conspiracy charge contained in the superseding indictment. J.A. 487, 491, 558.

⁵ Martin also challenged the sufficiency of the evidence supporting his conviction and the related revocation of his term of supervised release. *Buzzard*, 1 F.4th at 200, 204-205. Those issues are not presented in this Petition.

motions to suppress in a published opinion. *Id.* at 204. The court framed the issue as whether Dawson “violated their Fourth Amendment rights when he asked whether there was anything illegal in the car.” *Id.* at 201. The court concluded he had not. First, the court rejected the argument that Dawson’s question was unrelated to the mission of the traffic stop, agreeing with the district court that the question “related to officer safety and thus related to the traffic stop’s mission.” *Id.* at 203. That was because Dawson was “outnumbered” and the stop took place late at night in a high drug crime area. *Ibid.* The court noted that Dawson’s question could have been phrased more precisely, but “we decline to require such laser-like precision from an officer asking a single question in these circumstances.” *Id.* at 204. Second, the court concluded that “Dawson’s question didn’t extend the stop by even a second,” holding that “Dawson was mid-stop when he asked whether there was anything illegal in the vehicle.” *Ibid.* The question was asked before Dawson had “the information he needed to perform the customary checks on the driver and vehicle” and while “he was waiting for an additional officer to arrive.” *Ibid.* Therefore, because “the question was asked during a lawful traffic stop and didn’t prolong the stop, it passes constitutional muster . . . even if it exceeded the stop’s mission.” *Ibid.*

IX. REASON FOR GRANTING THE WRIT

The Petition should be granted so the Court can determine whether a police officer conducting a traffic stop unlawfully prolongs that stop, in violation of the Fourth Amendment, by asking the occupants of the car whether there is anything “illegal” in the car without any basis to do so.

The Constitution protects the rights of citizens “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. The stop of an automobile and the detention of its occupants is a seizure within the meaning of the Fourth Amendment. *Delaware v. Prouse*, 440 U.S. 648, 653 (1979). Because a traffic stop is “a limited seizure more like an investigative detention than a custodial arrest,” courts employ the two-step analysis from *Terry v. Ohio*, 392 U.S. 1 (1968), to determine whether the stop comports with the Fourth Amendment. *United States v. Rusher*, 966 F.2d 868, 875 (4th Cir. 1992). First, the court must determine “whether the officer’s action was justified at its inception.” *Terry*, 392 U.S. at 20. Second, the court must determine “whether [the stop] was reasonably related in scope to the circumstances which justified the interference in the first place.” *Ibid.* The lawfulness of an officer’s actions with regards to the Fourth Amendment “turns not on the officer’s actual state of mind at the time the challenged action was taken, but rather on an objective assessment of the officer’s actions.” *United States v. Branch*, 537 F.3d 328, 337 (4th Cir. 2008) (internal quotation marks and citation omitted).

Buzzard and Martin have never argued that the initial stop of their car was not justified. The issue is whether by asking whether there was anything “illegal” in

the car the officer diverted from the routine procedure of a traffic stop and converted the traffic stop into a criminal investigation without any basis to do so. That is an important question of federal law that this Court should resolve. *See* Rules of the Supreme Court 10(c).

A. The Fourth Amendment does not allow a police officer to turn a traffic stop into a more generalized criminal investigation without reasonable suspicion that criminal activity is afoot.

This Court examined the issue of how traffic stops can turn into criminal investigations in *Rodriguez v. United States*, 575 U.S. 348 (2015). Rodriguez was the driver of a car that was pulled over after an officer saw it “veer slowly onto the shoulder . . . for one or two seconds and then jerk back onto the road,” in violation of Nebraska law. The officer had his drug dog with him when he made the stop. *Id.* at 351. After processing the license, registration, and proof of insurance of Rodriguez and issuing a warning ticket, the officer “asked for permission to walk his dog around Rodriguez’s vehicle.” *Id.* at 352 (internal quotation marks omitted). Rodriguez did not give permission and the officer told him to “turn off the ignition, exit the vehicle, and stand in front of the patrol car to wait for the second officer” to arrive. *Ibid.* When backup arrived the officer ran his dog around the car and the dog alerted, leading to the discovery of methamphetamine. Approximately “seven to eight minutes had elapsed” from the issuance of the warning ticket until the dog alerted. *Ibid.*

This Court concluded that this extension of the traffic stop violated the Fourth Amendment. Under *Terry*, the “tolerable duration of police inquiries in the traffic-stop context is determined by the seizure’s ‘mission’ – to address the traffic violation that warranted the stop.” *Rodriguez*, 575 U.S. at 354. Thus, it “may last no longer than is necessary to effectuate th[at] purpose.” *Ibid.* (internal quotation marks omitted). An officer “may conduct certain unrelated checks during an otherwise lawful traffic stop,” but he “may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.” *Id.* at 355. A dog sniff “is not an ordinary incident of a traffic stop” and “is not fairly characterized as part of the officer’s traffic mission.” *Id.* at 356. “The critical question,” this Court concluded, “is not whether the dog sniff occurs before or after the officer issues a ticket . . . but whether conducting the sniff ‘prolongs’ – *i.e.* adds time to – ‘the stop.’” *Id.* at 357.

The “[a]uthority for the seizure[]” that is a traffic stop “ends when tasks tied to the traffic infraction are – or reasonably should have been – completed.” *Rodriguez*, 575 U.S. at 349. Therefore, when examining the propriety of an extended traffic stop, courts “evaluate ‘whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant.’” *United States v. Guijon-Ortiz*, 660 F.3d 757, 764 (4th Cir. 2011), quoting *United States v. Sharpe*, 470 U.S. 675, 686 (1985).

Rodriguez makes it clear that investigating criminal activity is outside the scope of the typical traffic stop. The regular procedures related to a traffic stop include checking the driver's license, registration and proof of insurance documentation, including checks to determine if the driver or passengers have any active warrants, based on officer safety concerns. *Rodriguez*, 575 U.S at 355. Actions beyond those incidents are not related to the purpose of the traffic stop. Rather, they are related to other criminal investigative interests. Such investigation requires more than just a traffic stop.

B. An officer asking whether there is anything illegal in a car is a general criminal investigation, not a diligent pursuit of the reason for a traffic stop.

This case turns on the meaning of Dawson's question to Buzzard as to whether there was anything illegal in the car. In concluding that asking such a question poses no Fourth Amendment issues, the Fourth Circuit conflated "illegal" with "dangerous." In doing so it stretched law that recognizes an officer's legitimate need to ensure his own safety to cover generalized inquiries about crimes, whether they involve a danger to the officer or not.

This Court has recognized that traffic stops can be dangerous for officers and they can take precautions to protect themselves while conducting the stop. *Rodriguez*, 575 U.S. at 356. These are "part of the mission of the stop itself" and this Court has distinguished them from "a general interest in criminal enforcement." *Ibid*. The district court concluded that Dawson asking if there was anything illegal in the car part of the mission of the stop itself, was a lesser intrusion than ordering

Buzzard and Martin out of the car, and related to “highway safety at least as much as searching for traffic warrants.” J.A. 248. The Fourth Circuit agreed. *Buzzard*, 1 F.4th at 203. The problem is not that Dawson asked Buzzard a question – it is the question that was asked.

Per Dawson’s testimony he asked Buzzard “if there was anything illegal in his vehicle.” J.A. 158. That question, the district court concluded, “could expose dangerous weapons or narcotics.” J.A. 247. While that is true, the question could also expose a multitude of evidence of criminal activity unrelated to officer safety or the basis for the traffic stop. That much is proven by what Buzzard and Martin admitted possessing – drug paraphernalia. J.A. 244. Putting to one side the observation that firearms are often tools of drug traffickers, *United States v. Manigan*, 592 F.3d 621, 629 (4th Cir. 2010), there is no comparable correlation with drug users. Thus while Dawson’s question could have exposed weapons, its scope was much broader and constituted the kind of “general interest in criminal enforcement” referenced in *Rodriguez*; See *United States v. Callison*, 436 F. Supp. 3d 1218, 1227 (S.D. Iowa 2020)(questions about whether there was anything illegal in car during traffic stop “went beyond the stop’s mission”).

A narrower question, one that was limited to trying to maintain officer safety, would have been whether there were any weapons in the car or anything that might be dangerous. Such a question would avoid the overbreadth of a question about “illegal” items while actually covering items that, while dangerous, are not illegal. For example, it is not illegal for most West Virginia drivers over the age of 21 to

possess concealed firearms within their cars. W. Va. Code § 61-1-7(c). Buzzard and Martin were not prohibited from possessing other weapons such as knives or brass knuckles. Even more ordinary items that are not weapons but could be used as such – a baseball bat or golf club – would fall under such questioning, but escape from the scope of “illegal.”

Dawson’s conduct during the traffic stop shows that he was pursuing a general criminal investigation, instead of diligently proceeding to write a ticket for Buzzard’s defective brake light. While it is disputed whether Dawson asked Buzzard for his license and registration, what is undisputed is that Dawson never ran those documents to see if they were valid and still current. Indeed, he never even began writing a citation for the broken brake light, much less issued one. Dawson testified that he stayed with Buzzard at the side of the road while waiting on other officers to arrive – in spite of never requesting backup – allegedly because it was safer than returning to his vehicle. J.A. 243. It is hard to see how Dawson was safer standing next to Buzzard on the side of the road than locked in his police car, which would allow him to escape at any time. Furthermore, both Buzzard and Martin testified that Dawson made comments to them that stopped the car because he was interested in what Martin was doing. J.A. 182-183, 186-187.

When conducting a traffic stop the Fourth Amendment allows an officer to take certain steps to ensure his own safety. It does not allow the officer to turn a routine traffic stop into a general criminal investigation. That is what Dawson did by asking whether there was anything “illegal” in the car rather than specifically

asking about weapons or dangerous objects. As a result, the Fourth Circuit erred by concluding that the question Dawson asked was part of the mission of the traffic stop.

C. Dawson unlawfully extended the traffic stop by focusing on whether there was anything illegal in the car, rather than diligently pursuing the purpose of the stop.

Rodriguez makes clear that the authority to seize the vehicle and the people in it ends “when tasks tied to the traffic infraction are – or reasonably should have been – completed.” *Rodriguez*, 575 U.S. at 349. In other words, an officer conducting a traffic stop cannot slow walk the incidents of that stop while fishing for information about potential criminal activity. In *Rodriguez* itself the extension of the stop happened after the traffic stop process was complete, but there is no reason to think that the result would have been any different had the officer run his drug dog around the car before completing the traffic stop paperwork. *See United States v. Simon*, 937 F.3d 820, 832 (7th Cir. 2019)(“the critical question is not whether the dog sniffed before or after the officer issued the warning, but whether the sniff prolongs – *i.e.*, adds time to – the stop”)(internal quotation marks omitted); *United States v. Hendrix*, 143 F. Supp. 3d 724, 731 (M.D. Tenn. 2015)(“[n]or can it be that the measure of a valid stop is demarked by when a traffic ticket or warning is actually written ‘[b]ecause a crafty officer, knowing this rule, may simply delay writing a ticket for the initial traffic violation until after she has satisfied herself that all of her hunches were unfounded’”), *quoting United States v. Ellis*, 497 F.3d 606, 612 (6th Cir. 2007). The same is true in this case.

The Eleventh Circuit faced a situation similar to this case in *United States v. Campbell*, 912 F.3d 1340 (11th Cir. 2019). There a Georgia sheriff's deputy saw a vehicle cross the road's fog line and noticed that the left turn signal was not working. *Id.* at 1344. The deputy stopped the car, approached and asked the driver to step out and come back to his patrol car while he wrote the citation. *Id.* at 1345. While writing the ticket, the deputy began a license check and spoke with the driver. After the driver had told the deputy that he was not traveling with any guns, the deputy asked the driver "if he had any counterfeit CDs or DVDs, illegal alcohol, marijuana, cocaine, methamphetamine, heron, ecstasy, or dead bodies in the car." *Id.* at 1345. The driver responded that he did not. In turn, the deputy asked for consent to search the car which was given by the driver. A search of the car uncovered a pistol and ammunition and the driver admitted that he had lied about not traveling with a gun because he was a convicted felon. *Ibid.*

The court found that the officer's questions about whether there was anything illegal in the car unlawfully prolonged the traffic stop under *Rodriguez*. While an officer can ask questions related to the reasons for the traffic stop, the officer cannot inquire into other questions about criminal activity absent a finding of reasonable suspicion. *Campbell*, 912 F.3d at 1350-1353. The length of the time that was involved with the prolonged stop was immaterial for purposes of determining whether a Fourth Amendment violation has occurred. *Id.* at 1353. The court also held that "a stop is unlawfully prolonged when an officer, without reasonable suspicion, diverts from the stop's purpose and adds time to the stop in

order to investigate other crimes.” *Ibid.* The deputy’s questions about whether the defendant had anything illegal in his car unlawfully prolonged the traffic stop as those questions were not related to the stated basis for the stop. *Id.* at 1355.⁶

The Second Circuit reached a similar conclusion in *United States v. Gomez*, 877 F.3d 76 (2d Cir. 2017). In that case an officer stopped a car after witnessing three separate traffic violations. When the officer approached the driver’s side of the car, he ordered the driver to turn off the car’s engine. *Id.* at 82. After the driver complied, the officer bypassed any questions about the reason for the stop and advised the driver that they “were conducting an investigation into bad heroin as well as firearms within the city of Hartford.” *Ibid.* The driver ultimately consented to a search of the trunk, which uncovered a large amount of heroin. *Id.* at 82-83.

On appeal, the court found that the officer had unlawfully prolonged the traffic stop. Although the stop had not lasted longer than five minutes, Gomez was still questioned about matters that were unrelated to the traffic violation. *Gomez*, 877 F.3d. at 90. The officer who initiated the stop spent most of his time asking questions about the department’s heroin investigation rather than conducting the “ordinary inquiries incident to a traffic stop.” *Id.* at 91. The court held that “an officer may not consume much of the time justified by the stop with inquiries about offenses unrelated to the reasons for the stop.” *Id.* at 92; *see also Callison*, 2020 WL

⁶ Because the stop occurred before *Rodriguez* was decided, the court ultimately concluded that the officer acted in good faith and did not require suppression. *Campbell*, 912 F.3d at 1355-1357. Dawson cannot rely on similar dispensation as the stop in his case took place years after *Rodriguez* was decided.

468911 at *6 (questions about whether there was anything illegal in car extended stop); *United States v. Gorman*, 859 F.3d 706 (9th Cir. 2017)(officer's extension of stop to pursue general investigative inquiries was improper).

The stop in this case was prolonged in the same sense as the stops in *Campbell* and *Gomez* – Dawson converted the traffic stop into a criminal investigation that had nothing to do with the reason for the stop. The district court erred by concluding otherwise.

X. CONCLUSION

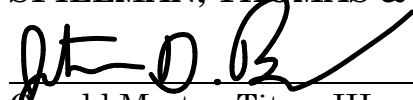
For the reasons stated, this Court should grant certiorari in this case.

Respectfully submitted,

**JASON WATTIE BUZZARD
PAUL WILLIAM MARTIN**

By Counsel

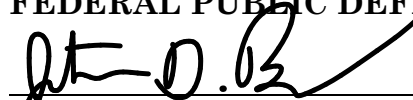
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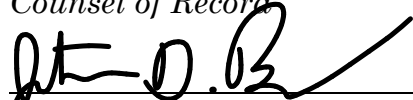
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